

REDACTED



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
SAM NUNN ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

March 12, 2021

Delivered Via Email: sam@ballarddevelopment.com

Mr. Sam Susen
Ballard Development LLC
3317 Dayton Blvd #15752
Chattanooga, TN 37415

RE: 1500 and 1502 E.13th Street parcels located within the Southside Chattanooga Lead Superfund Site in Chattanooga, Tennessee

Dear Mr. Susen:

Thank you for contacting the U.S. Environmental Protection Agency (EPA or the Agency) on February 18, 2021, about your plans concerning the 1500 and 1502 E.13th Street parcels (the "Property"). In your inquiry, you described your intentions to construct four residences on the Property (the "Development") and expressed concerns regarding the timing for the EPA's anticipated cleanup and the Development at the Property. This Superfund comfort/status letter provides a summary of our call.

Under the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly referred to as Superfund),¹ the Agency's mission is to protect human health and the environment from the actual or potential risks posed by exposure to contaminated or potentially contaminated land and other media. A Superfund cleanup can help return lands to productive reuse. We are providing this letter consistent with the Agency's 2019 Comfort/Status letter policy.² The purpose of this comfort/status letter includes providing you with information that may be relevant to the potential CERCLA liability concerns you have identified at the impacted Property and summarizing the relevant information available to the EPA about the Site as of the date of this letter. We hope this information will enable you to make informed decisions regarding the Property's cleanup status and CERCLA's liability protections as you move forward with making a decision about the Property.

Property Status

Information on sites that are, or potentially are, contaminated with hazardous substances and may warrant action under Superfund, including site-specific documents and fact sheets, is recorded in the EPA's Superfund Enterprise Management System (SEMS), which may be accessed at <https://cumulis.epa.gov/supercpad/cursites/srchsites.cfm>. SEMS includes a public access database that contains information about sites where there has been EPA regional office involvement under Superfund. The EPA also maintains a webpage for the Southside Chattanooga Lead Superfund Site that can be accessed at <https://cumulis.epa.gov/supercpad/cursites/csitinfo.cfm?id=0410686>.

¹ 42 U.S.C. §§ 9601, *et seq.*

² See [2019 Policy on the Issuance of Superfund Comfort/Status Letters](#).

The Property you own is situated within the Southside Chattanooga Lead Superfund Site (“Site”). This Site is located in SEMS and is on the National Priorities List (NPL). For the reasons stated below, we are addressing the Site under Superfund authority.

History and Status of the Site

The Site, located in downtown Chattanooga, Tennessee, consists of residential neighborhoods and non-residential communal areas (parks, schools, playgrounds, childcare centers), where soils have been impacted by lead-bearing foundry material. Past foundry operations generated large quantities of waste byproduct, consisting of spent foundry sand, dust from collection systems, slag, coal, spent casting refractory material, off-spec products, and other miscellaneous wastes.

In 2011, the EPA was contacted by the Tennessee Department of Environment and Conservation (TDEC) regarding elevated blood lead level in residents in Chattanooga. The EPA initiated a Time-Critical Removal Action of lead-impacted soils from 84 properties located on Read Avenue, Mitchell Avenue, Underwood Street (formerly Carr Street), and intersecting streets. Subsequently, the EPA and TDEC initiated a soil study to determine whether lead-contaminated foundry-related waste materials were isolated in the area of previous Removal Actions or whether additional areas had been impacted. The soil study determined that elevated levels of lead in soil was not limited to the Read and Mitchell Avenue area. The EPA added the site to the NPL on September 13, 2018. In 2019, the EPA issued an Early Action Record of Decision (ROD) to address the contaminated soil from the residential properties. The full extent of the areas impacted have not been defined, and additional testing and cleanup is needed and ongoing.

Properties with lead concentrations above the Removal Action Level (1,200 mg/kg) are prioritized for remediation. Currently, the EPA is continuing to cleanup properties in Highland Park where approximately 70% of the sampled properties qualify for remediation. As of fall 2020: 1,894 properties have been sampled within eight neighborhoods; 233 properties have been cleaned up and restored; and soil sampling for residential properties is ongoing.

Reuse of the Property

As previously explained, the EPA is prioritizing parcels with lead levels exceeding 1200 mg/kg. The EPA sampled the Property in August 2020, and results indicated lead contamination in soils of 804.9 mg/kg in the front yard and 886 mg/kg in the back yard at 1500 E. 13th St. and 1038.7 mg/kg at 1502 E. 13th Street. Although these levels exceed the 360 mg/kg soil lead level deemed by the EPA as protective of residential use, neither of these parcels nor any adjacent parcel meets the EPA’s current criteria for prioritization. Based on the information you provided, the EPA Region 4 understands that you intend to build residences at the Property. We also understand the Development to involve excavation and movement of previously identified lead contaminated soils. As we discussed, these activities, if conducted prior to the EPA’s cleanup, could interfere with the EPA’s investigation or cleanup and/or result in contaminated soil spreading to other areas.

At this time, the EPA cannot provide an approximate date for cleanup at the Property. As your plans progress further, please continue to discuss the Development with us. The EPA recommends that you consult with your own legal counsel and environmental professional to ensure that your proposed reuse will not affect the EPA’s cleanup response.

CERCLA's Bona Fide Prospective Purchaser Liability Protection

The EPA understands that you may be interested in information regarding the bona fide prospective purchaser (BFPP) provision of CERCLA. Congress amended CERCLA in 2002 to exempt certain parties who buy contaminated or potentially contaminated properties from CERCLA liability if they qualify as BFPPs. The BFPP provision provides that a person meeting the criteria of CERCLA §§ 101(40) and 107(r)(1), and who purchases the property after January 11, 2002, will not be liable as an owner or operator under CERCLA.

The Agency has issued guidance discussing some of the BFPP criteria. See *Enforcement Discretion Guidance Regarding Statutory Criteria for Those Who May Qualify as CERCLA Bona Fide Prospective Purchasers, Contiguous Property Owners, or Innocent Landowners* ("Common Elements") ("Common Elements Guidance") (July 29, 2019, available at <https://www.epa.gov/enforcement/common-elements-guidance>). Based upon your representation of your situation, the BFPP provision may apply. Note that a court, rather than the EPA, ultimately determines whether a landowner has met the criteria for BFPP status. Thus, the EPA recommends that you consult your legal counsel to assess whether you satisfy each of the statutory requirements necessary to achieve and maintain BFPP status.

Among other criteria outlined in CERCLA, a BFPP must take "reasonable steps" to stop continuing releases, prevent threatened future releases, and prevent or limit human, environmental, or natural resources exposure to any previously released hazardous substances as required by CERCLA § 101(40)(B)(iv). This requirement is explored further in the Common Elements Guidance linked above.

Reasonable Steps

You may ask what actions by the owner of the Property may constitute reasonable steps. As noted above, the Agency has listed the Site on the NPL and commenced the Remedial Action at the Site and identified several environmental concerns. Based on the information we have evaluated to date, we believe that the following may be reasonable steps related to the hazardous substance contamination found at the Site:

- Do not perform any activities or construct any structures that will or may exacerbate contaminated conditions at the Property.
- Refrain from digging or disturbing soil without first consulting with the EPA Remedial Project Manager, Ms. Jasmin Jefferies.
- All excavated contaminated soils should be properly characterized, treated, and disposed in accordance with all applicable, or relevant and appropriate state or federal environmental laws and regulations.
- Provide access to the Property at all reasonable times and cooperate with the EPA for the purpose of conducting monitoring and response actions.

Any reasonable steps suggested by the EPA Region 4 are based on the nature and extent of contamination currently known to the Agency and are provided as a guide to help you as you seek to reuse the Property. Because a final determination about which steps are reasonable would be made by a court rather than the EPA, and because additional reasonable steps may later be necessary based on site conditions, this list of reasonable steps is not exhaustive. You should continue to identify reasonable steps based on your observation and judgment and take appropriate action to implement any reasonable

step whether or not the EPA regional staff have identified any such steps.³ We recommend that you consult with your environmental professional and legal counsel to ensure that you take the reasonable steps necessary with respect to any hazardous substance contamination.

State Actions

We can only provide you with information about federal Superfund actions at the Site, federal law and regulations, and EPA guidance. For information about potential state actions and liability issues, please contact Mr. Troy Keith at troy.keith@tn.gov or via telephone at 423-634-5755.

Conclusion

The EPA Region 4 remains dedicated to facilitating the cleanup and reuse of contaminated properties and hopes the information contained in this letter is useful to you. Please note that the letter does not offer conclusive statements about Site conditions or liability. You may find it helpful to consult your own environmental professional, legal counsel, and your state, tribal, or local environmental protection agency before taking any action to acquire, clean up, or redevelop the impacted Property. These consultations may help you obtain a greater level of comfort about the compatibility of the proposed use and ensure compliance with any applicable federal, state, local, and/or tribal laws or requirements. If you have any additional questions or wish to discuss this information further, please feel free to contact Ms. Jasmin Jefferies, Remedial Project Manager, at 404-304-2817 for technical information. If you have any legal questions regarding this letter, please contact me at 404-562-9547, or Mr. Graham Burkhalter, Assistant Regional Counsel, at 404-562-9519.

Sincerely,

MARIANNE LODIN Digitally signed by MARIANNE
LODIN
Date: 2021.03.12 09:48:24 -05'00'

Marianne O. Lodin
Associate Regional Counsel

cc: Rhelyn Finch, Land Revitalization Legal Coordinator, EPA Region 4/ORC
Leonardo Cerron, Enforcement Project Manager, EPA Region 4/SEMD
Troy Keith, TDEC

³ CERCLA § 101(40)(B)(iv) provides that “The person exercises appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to (i) stop any continuing release; (ii) prevent any threatened future releases; and (iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance.”